



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

**[Docket ID: OSM-2014-0003; S1D1S SS08011000 SX066A00067F 134S180110;
S2D2S SS08011000 SX066A00 33F 13XS501520]**

Petition to Initiate Rulemaking; Use of Explosives on Surface Coal Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice; availability of petition to initiate rulemaking and request for comments on the petition.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), seek comments concerning a petition, submitted pursuant to the Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 et seq. (SMCRA or the Act), requesting that we amend our regulations governing the use of explosives to prohibit

visible nitrogen oxide clouds. We are requesting comments on the merits of the petition and the rule changes suggested in the petition. Comments received will assist the Director of OSMRE in making the decision whether to grant or deny the petition.

DATES: Electronic or written comments: We will accept written comments on the proposed rule on or before [Insert date 30 days after the date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. The petition has been assigned Docket ID: OSM-2014-0003. Please follow the online instructions for submitting comments.

Mail/Hand-Delivery/Courier: Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252 SIB, 1951 Constitution Avenue, N.W., Washington, DC 20240. Please include the Docket ID: OSM-2014-0003.

FOR FURTHER INFORMATION CONTACT: Joshua Rockwell, Division of Regulatory Support, 1951 Constitution Ave., N.W., Washington, DC 20240; Telephone: 202-208-2633; E-mail: jrockwell@osmre.gov.

SUPPLEMENTARY INFORMATION:

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I. How does the petition process operate?

Section 201(g) of SMCRA, 30 U.S.C 1201(g), provides that any person may petition the Director of OSMRE to initiate a proceeding for the issuance, amendment, or repeal of any regulation adopted under SMCRA. It also specifies that “the Director shall either grant or deny the petition” within 90 days after receipt. On March 13, 1979, OSMRE adopted regulations at 30 CFR 700.12 to further implement this statutory provision.

Under 30 CFR 700.12(c), we will accept a petition for rulemaking only if the Director determines that it sets forth “facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation.” The rule also states that facts, technical justification or law previously considered in a different petition or rulemaking on the same issue do not qualify as a reasonable basis. Any petition that does not meet this threshold will be rejected without prejudice.

If we accept the petition, we will publish a notice in the Federal Register seeking comments on whether we should grant or deny the petition. At the close of the

comment period, the Director will decide to either grant or deny the petition, in whole or in part. We will publish notice of that decision in the Federal Register. If the Director grants the petition, we will initiate rulemaking proceedings in which we again will seek public comment before adopting a final rule. If the Director denies the petition, we will notify the petitioner of the reasons for the decision not to initiate any rulemaking action pursuant to the petition.

In accordance with 30 CFR 700.12(d), the Director's decision on a petition is a final decision for the Department, which means that the petitioner is not entitled to administrative review of the decision. The Director's decision on a petition constitutes the final decision of the Department of the Interior. Accordingly, it is not subject to review by the Office of Hearings and Appeals. However, the petitioner may seek judicial review of a decision to reject or deny the petition.

II. What action does the petition request that we take?

On April 18, 2014, we received from WildEarth Guardians a petition for rulemaking requesting that OSMRE promulgate rules to prohibit the production of visible nitrogen oxides (NO_x) emissions during blasting at surface coal mining operations in order to protect the health, welfare, and safety of the public and of mine workers, and to prevent injury to persons. The petition requests that we amend our regulations at 30 CFR 816.67 and 817.67 to prohibit visible NO_x emissions during blasting and to require that the operator visually monitor all blasting activities and report all instances of visible emissions of NO_x to the regulatory authority.

III. How may I view the petition and exhibits?

You may view and download the complete text of the petition and accompanying exhibits on our home page at

<http://www.osmre.gov/programs/rcm/petitions/WEGPetition041414.pdf> and

<http://www.osmre.gov/programs/rcm/petitions/WEGPetitionExhibits.pdf> respectively.

The petition and exhibits also are available for inspection at the location listed under

ADDRESSES.

IV. How may I comment on the petition?

General guidance

We are seeking comment on the merits of the petition and the requested rule changes. In addition, we seek comment on the extent to which the decision in In re Permanent Surface Min. Regulation Litig. I, Round II, 1980 U.S. Dist. LEXIS 17660 at *43-44 (D.D.C., May 16, 1980), 19 Env't Rep. Cas. (BNA) 1477, 1491-1492, regarding OSMRE's authority to regulate air quality, should guide the Director in making the decision to grant or deny the petition. In that decision, the court remanded the 1979 version of 30 CFR 816.95 and 817.95, which contained extensive provisions regulating fugitive dust (including fugitive dust from blasting¹), because the court found that "the Secretary's authority to regulate [air] pollution is limited to activities related to erosion." *Id.* at 1491.

¹ 30 CFR 816.95(b)(15) (1979).

We will review and consider all comments submitted to the addresses listed above (see **ADDRESSES**) by the close of the comment period (see **DATES**).

Please include the Docket ID “OSM-2014-0003” at the beginning of all written comments. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be included in the docket or considered in the development of a proposed rule.

Public availability of comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

We will not hold a public hearing on the petition. The petitioner did not request a hearing and we have determined under 30 CFR 700.12(c) that no hearing is necessary. However, OSMRE personnel will be available to meet with the public during business hours (8 a.m. to 4 p.m.) during the comment period. Contact the person listed under **FOR FURTHER INFORMATION CONTACT** if you wish to arrange a meeting.

V. Procedural Matters and Required Determinations.

This notice is not a proposed or final rule, policy, or guidance. Therefore, it is not subject to the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, the Paperwork Reduction Act, the Unfunded Mandates Reform Act, or Executive Orders 12866, 13563, 12630, 13132, 12988, 13175, and 13211. We will conduct the analyses required by these laws and executive orders only if we decide to grant the petition and develop a proposed rule.

In developing this notice, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106-554, section 15).

This notice is not subject to the requirement to prepare an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C), because no proposed action, as described in 40 CFR 1508.18(a) and (b), yet exists. This notice only seeks public comment on whether the Director should grant the petition and initiate rulemaking. If the Director ultimately grants the petition, we will prepare the appropriate NEPA compliance documents as part of the rulemaking process.

List of Subjects

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining

Dated: July 15, 2014.

Joseph G. Pizarchik

Director, Office of Surface Mining Reclamation and Enforcement

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